



Establishing a 501(c)3: Incorporating your Council



Nonprofit Organizations - Who is Qualified?

- **A nonprofit organization qualifies for nonprofit status only if it fits into one of the categories in Section 501(a) of the Internal Revenue Code. These qualification requirements must continue to be satisfied to avoid termination of nonprofit status**



Nonprofit Organizations - Who is Qualified?

- **Requirements of a nonprofit status organization:**
- Nonprofit organization serves some type of common good. Nonprofit organization is not a "for profit" entity. Net earnings do not benefit the members of the nonprofit organization. Nonprofit organization does not exert political influence.



- **Certain activities of a nonprofit organization may result in a tax liability including:**
 - Unrelated business activities.
 - Feeder organizations.
 - Private foundations.
 - Prohibited transactions



Application Procedure

- Organizations seeking exempt status from Federal income tax must file a written application with the director for the key district in which the organization's principal office or place of business is located.
- An organization applying under IRC §501(c)(3) uses Form 1023.



Department of the Treasury
Internal Revenue Service

Instructions for Form 1023

(Revised September 1998)

Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code

Note: Retain a copy of the completed Form 1023 in the organization's permanent records. See **Public Inspection of Form 1023** regarding public inspection of approved applications.

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

User Fee.—Submit with the Form 1023 application for a determination letter, a Form 8718, User Fee for Exempt Organization Determination Letter Request, and the user fee called for in the Form 8718. You may obtain Form 8718, and additional forms and publications, through your local IRS office or by calling 1-800-829-3676 (1-800-TAX-FORM). User fees are subject to change on an annual basis. Therefore, be sure that you use the most current Form 8718.

Helpful information.—For additional information, see:

- Pub. 557, Tax-Exempt Status for Your Organization
- Pub. 598, Tax on Unrelated Business Income of Exempt

501(n) charitable risk pools use Form 1023 to apply for a determination letter under section 501(c)(3).

4. Group exemption letter.—Generally, Form 1023 is not used to apply for a group exemption letter. See Pub. 557 for information on how to apply for a group exemption letter.

What To File

All applicants must complete pages 1 through 9 of Form 1023. These organizations must also complete the schedules or form indicated:

1. Churches Schedule A
2. Schools Schedule B
3. Hospitals and Medical Research Schedule C
4. Supporting Organizations (509(a)(3)) Schedule D
5. Private Operating Foundations Schedule E
6. Homes for the Aged or Handicapped Schedule F
7. Child Care Schedule G
8. Scholarship Benefits or Student Aid Schedule H
9. Organizations that have taken over or will take over a "for profit" institution Schedule I
10. Organizations requesting an advance ruling in Part III, Line 10 Form 872-C

Attachments.—For any attachments submitted with Form 1023.—

- Show the organization's name, address, and employer identification number (EIN).
- Identify the Part and line item number to which the attachment relates.
- Use 8½ x 11 inch paper for any attachments.
- Include any court decisions, rulings, opinions, etc., that will expedite processing of the application. Generally, attachments in the form of tape recordings are not acceptable unless accompanied by a transcript.

When To File



Required Inclusions For Application

- **Employer Identification Number:** Every exempt organization is required to have an employer identification number (EIN), whether or not it has any employees. If the organization does not have an EIN, the application should include a completed Form SS-4, Application for Employer Identification Number.



Required Inclusions For Application

- **Organizing Documents:** Each application must include a conformed copy of the organization's Articles of Incorporation (Certificate of Incorporation, if available), Articles of Association, Trust indenture, Constitution, or other enabling document. There must be an organizing document to qualify for exempt status.



Required Inclusions For Application

- Please do not forget to check and see if your State has additional requirements.
- Most States have web sites that will help you research there individual requirements
- Please contact an Attorney if you need help forming your organization. They can be a valuable asset.



Required Inclusions For Application

- **By-Laws:** If the organization is a corporation or unincorporated association that has adopted bylaws, a conformed copy that an authorized officer certifies as current should be included in the application package.



Required Inclusions For Application

- **Conformed Copy Definition:** A copy that agrees with the original and all its copies. If the original required a signature the copy must be signed or be accompanied by a written declaration signed by an authorized officer of the organization. The officer must certify that the document is a complete and accurate copy of the original. A certificate of incorporation should be approved and dated by an appropriate state official.



Required Inclusions For Application

- **Description Of Activities:** A full description of the purposes and activities of the organization should be included in the application. Include the standards, criteria, procedures, or other means that the organization adopted or planned for carrying out those activities.
- **These activities should support your mission statement.**



Required Inclusions For Application

- **Financial Data:** Include in the application financial documents showing the receipts and expenditures for the current year and the three preceding years (or years in existence if less than four). For each accounting period, describe sources of receipts and nature of expenditures. Include current statement of assets and liabilities. If the organization has not begun operations, or has operated for less than one year, a proposed budget for two full accounting periods and a current statement of assets and liabilities is acceptable.



Required Inclusions For Application

- **Fund-Raising Activities Description:** Include sufficient detail to show how the activities will be financed. A statement of the actual and proposed fund-raising activities may be required.



Required Inclusions For Application

- **Information On Previously Filed Tax Returns:** Include information on previously filed Federal income tax returns and exempt organization information returns. **Note:** Do not send original documents. They become part of the IRS file and will not be returned.



Required Inclusions For Application

- **Attachments:** Every attachment should show the name and address of the organization, the date, an identifiable heading, and that it is an attachment to the application form.



Required Inclusions For Application

- **Stock:** If stock is issued, the following must be provided:
 - Class or classes of stock.
 - Number and par value of shares.
 - Consideration for which the stock was issued.
 - If instrument authorizes dividend payments on any class of stock.
 - If any dividends have been paid.
- **Note: Submit a copy of the stock certificate.**



Required Inclusions For Application

- **Additional information may be requested:**
 - Representative copies of advertising placed.
 - Copies of publications.
 - Distributed written material used for expressing views on proposed legislation.
 - Copies of leases, contracts, or agreements which the organization has entered into.



Required Inclusions For Application

- **Determination Letter Request (Form 8718)**
Form 8718 is used to compute the required user fee (\$150–\$500). The application form/letter is filed with the key District Director. An organization that has not established its exempt status by the due date for filing an information return—complete and file Form 990, Return of Organization Exempt From Income Tax; or Form 990-PF, Return of Private Foundation. Check box for "application pending."



Required Inclusions For Application

- **Group Exemption Letter**
- An organization controlled by a central organization (church, Boy Scouts, Girl Scouts, fraternal organization) may already be covered by a group exemption letter. If not, the central organization may update its group exemption letter and submit it at the next annual ruling date. Each branch may not be required to apply separately.



Required Inclusions For Application

- **Central Organization:** An organization that has one or more subordinates under its general supervision or control.
- **Subordinate Organization:** A chapter, local, post, or unit of a central organization. A subordinate may or may not be incorporated. It must have an organizing document. A subordinate described in IRC §501(c)(3) may not be included in a group exemption letter if it is a private foundation described in IRC §509(a).



Required Inclusions For Application

- **Effective Date Of Exemption**
- A ruling or determination letter recognizing exemption is effective as of the date of formation of an organization if during the period before the date of the ruling or determination letter, its purposes and activities were those required by the law.
- Upon obtaining recognition of exemption, the organization may file a claim for a refund of income taxes paid for the period for which its exempt status is recognized. If an organization is required to alter its activities or substantially amend its charter to qualify, the ruling or determination letter recognizing exemption will be effective as of the date specified in the letter. A ruling or determination letter recognizing exemption may not be relied upon if there is a material change inconsistent with exemption in the character, purpose, or method of operation of the organization.



Required Inclusions For Application

- **Political Activity**
- An organization exempt under IRC §501(c) must file Form 1120-POL, U.S. Income Tax Return for Certain Political Organizations, for any year in which it:
 - (1) Expends any amount to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local public office or office in a political organization, or the election of Presidential or Vice Presidential electors (whether or not such individuals or electors are selected, nominated, elected, or appointed); and
 - (2) Has net investment income.



Nonprofit Organizations - Annual Reporting Requirements

- Nonprofit organizations are generally required to file an annual information return, Form 990 [IRC §6033]. The typical annual return specifically states items of gross income, receipts and disbursements, and other information.



Nonprofit Organizations - Annual Reporting Requirements

- **Nonprofit organizations not required to file an annual information return (Form 990 or Form 990-EZ):**
 - Churches. (Including affiliated organizations.)
 - Governmental agencies. Nonprofit organizations whose gross receipts are less than \$25,000.
 - Private foundations. (File Form 990-PF.)
- See IRS Publication 557 for a more detailed list.



Nonprofit Organizations - Annual Reporting Requirements

- **Caution: An exempt entity that is not required to file an annual information return, Form 990 or Form 990-EZ, is still responsible for other applicable returns. Examples: Payroll tax returns; or unrelated business income tax return (Form 990-T).**



Filing Deadline

- **The annual return is due by the 15th day of the 5th month after the accounting period ends. If the nonprofit organization has been liquidated, dissolved, or terminated; the return is due by the 15th day of the 5th month after that date. Use Form 2758 to request an extension**



Lobbying

- Expenditures by public charities to influence legislation
- **(1)** General rule
- In the case of an organization to which this subsection applies, exemption from taxation under subsection (a) shall be denied because a substantial **part** of the activities of such organization consists of carrying on propaganda, or otherwise attempting, to influence legislation, but only if such organization normally -
 - **(A)** makes lobbying expenditures in excess of the lobbying ceiling amount for such organization for each taxable year, or
 - **(B)** makes grass roots expenditures in excess of the grass roots ceiling amount for such organization



DUNS Number

- Call Dun and Bradstreet at:
- 1-866-705-5711



Cross-Cutting Public Policies

- There are cross-cutting public policy requirements applicable to Federal grants, including those awarded by the EPA. The term “public policy” indicates that the requirement is based on social, economic, or other objectives or considerations that may be attached to the expenditure of Federal funds by grantees, consortium participants, and contractors, in general, or may relate to the expenditure of Federal funds for research or other specified activities



- In addition to cross-cutting requirements that apply to Federal agencies and their grant programs, EPA grantees are subject to requirements contained in EPA's annual appropriations acts that apply to the use of EPA grant funds.



Debarment (40 CFR Part 32)

- This action is taken by a debarring official in accordance with Federal agency regulations implementing Executive Order 12549 to exclude a person or organization from participating in transactions. Grantees may be debarred or suspended if they are found to have seriously and willfully not complied with grant conditions or are found to have engaged in scientific misconduct. If debarred, a grantee may not receive Federal assistance funds and may not participate in covered transactions for the period covered by the debarment.



Drug-Free Workplace (40 CFR Part 32, Subpart F)

- The Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D, as amended) requires that all organizations receiving grants from any Federal agency agree to maintain a drug-free workplace. Under this law, employees of grantees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance at work. By signing the application, the authorized organizational official agrees that the grantee will provide a drug-free workplace and will comply with requirements to notify NCI in the event that an employee is convicted of violating a criminal drug statute.



Grantee Organization Responsibility

- In applying for grant support, **the grantee organization agrees to administer any awarded grant in accordance with the regulations and current policies that govern the assistance programs of the EPA.**



Grantee Organization Responsibility

- Acceptance of an award imposes upon the grantee organization and the project manager responsibility for conducting the project and using grant funds prudently and in accordance with cost principles, for the purposes set forth in the approved application. The grantee assumes responsibility for the fiscal and administrative management of the project and fulfillment of any special terms or conditions of award that may be prescribed for conducting the project.



Legal Implication of Application

- The signature of an authorized organizational official on the application indicates the organization's intent to comply with the laws, regulations, and policies to which a grant is subject, including applicable public policy requirements.



Legal Implication of Application

- That official is also attesting to the fact that the information contained in the application is true and complete, and in conformance with Federal requirements and the organization's own policies and requirements.



- Applicants for and recipients of EPA grant funds, whether such funds are received directly from EPA, indirectly under a contract agreement, or as student assistance under a training grant, are responsible for and must adhere to all applicable Federal statutes, regulations, and policies, including income tax regulations.



Financial Management Requirements

- You must have complete financial records for each assistance agreement.
- Recipients financial management systems must provide accurate, current and complete disclosure of the financial results of each Federally sponsored project.



- Each assistance agreement must be separately identified in the accounting system. It must show how much money was awarded, how much money has been spent.
- Income earned and interest must also be tracked, if applicable



- All assistance agreement funds and anything purchased with assistance agreement funds must be used ONLY for the purposes outlined in the scope of work.



CRITERIA FOR REVIEWING AND APPROVING PROPOSED COSTS

- **Must Conform to OMB Cost Principles**
- **Must Conform to Applicable Regulations**
- **Must Conform to Terms of Assistance Agreement**
- **Must be Incurred During the Project Period**
- **Must be Eligible, Allowable, Allocable & Reasonable**



Internal Policies

- Time and Attendance:
 - After the fact.
 - Signed and dated.
 - Reflecting actual distribution of time between activities.
 - Records must cover payroll period.



Internal Policies

- Travel Policy
- If there is no written travel policy, Federal rates for travel will be enforced



Internal Policies

- Procurement
 - Cost or Price Analysis for each Procurement
 - Procurement Code of Ethics
 - Procurement File



Internal Policies

- No Policies
 - Organization non-compliant Federal funds at risk.



Internal Policies

- Great policies but the organization fails to follow them!

Once again you are noncompliant!



What can a recipient do to survive.

- When preparing policies be sure that you can abide by them.
- Ensure that they meet the minimum Federal requirements.
- Educate your staff on the policies.



What can a recipient do to survive.

- Remember, you will be measured against your policy if it is more stringent than the Federal requirement.



What can a recipient do to survive.

- Review your policies and procedures routinely to ensure that everyone is following them. (this is especially important in decentralized systems)



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- www.fedgrants.gov
- <http://www4.law.cornell.edu/cgi-bin/empower>
- www.irs.ustreas.gov
- <http://www.epa.gov/>